

ELECTIONS: When initiative petitions proposing
INITIATIVE & REFERENDUM: a constitutional amendment are filed
with the Secretary of State and found
to contain insufficient signatures to place the proposition on the
ballot, such petitions cannot be returned to the circulators; and
such petitions, which provided for submission of the proposed amend-
ment at the November 3, 1970 general election or at a special elec-
tion to be called by the Governor, may not be counted toward placing
a proposition on the ballot at a general election or a special elec-
tion to be held after the general election on November 3, 1970.

OPINION NO. 440

November 10, 1970



Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This opinion is in response to your request for an opinion
on the following questions:

"1. Where petitions seeking to invoke the
power of initiative or referendum have been
presented to the Secretary of State, but found
to contain an insufficient number of signatures,
as required by the constitution, must the Sec-
retary return said petitions to the person or
persons presenting them, or must he retain them
in his possession?

"2. Where petitions seeking to invoke the
power of the initiative set forth a specific
date on which the proposed measure is to be
presented to the people, and sufficient sig-
natures to place the measure on the ballot
are not obtained in time to submit the peti-
tions to the Secretary of State four months
before that election, may the same petitions,
whether submitted to the Secretary of State
originally or not, be counted toward placing
the measure on the ballot at a general elec-
tion two years hence, or at a special election
called by the Governor?"

With respect to your first question, we note that Section
28.040, RSMo 1969, provides:

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"He [Secretary of State] shall keep his office at the seat of government; have the safekeeping of the seal of state and of all public records, including surety bonds, except those for which other provisions are made by law, rolls, documents, acts, resolutions and orders of the general assembly; keep a register of all commissions issued, the official acts of the governor and when necessary, attest the same."

We further note that Section 28.080, RSMo 1969, provides:

"He [Secretary of State] shall not permit any original roll, paper or public document filed in his office to be taken out of it unless called for by a resolution of either or both houses of the general assembly, or for the examination of the chief executive or for publication when required by law."

Section 126.030, RSMo 1969, specifies the procedure by which the Secretary of State accepts initiative petitions. That section reads in part:

". . . When any such initiative or referendum petitions shall be offered for filing, the secretary of state, in the presence of the governor and the person offering the same for filing, shall detach the sheet containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions; the detached copies of such measure shall be delivered to the person offering the same for filing. . . ."

We are of the opinion that once the above-mentioned procedure is completed, the petitions are "filed" and that the Secretary of State then must perform his statutory duties with respect to seeing that the proposition is placed on the ballot if he determines that the petition has the required number of signatures. If the petition does not have the required number of signatures, we believe, under the two statutory sections first quoted, that he has no power to return the petitions to the persons presenting petitions.

With respect to your second question, we observe that Article III, Section 50 of the Constitution provides in part:

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". . . Every such petition shall be filed with the secretary of state not less than four months before the election . . ."

Article XII, Section 2(b) provides in part:

"All amendments proposed . . . by the initiative shall be submitted to the electors for their approval or rejection . . . at the next general election, or at a special election called by the governor prior thereto, . . ."

We understand that the petitions which occasioned this particular inquiry state that the proposition, which the petitioners sought to have submitted to the electorate, was to be voted on at the November 3, 1970 general election or at a special election to be called by the Governor. Under Article XII, Section 2(b), the Governor could only call a special election prior to the general election held on November 3, 1970 to vote on the proposed amendment. Therefore, we interpret the reference to a special election called by the Governor on the petitions to refer to a special election called before November 3, 1970. Consequently, it appears that the signers of the petitions contemplated that the proposition would be submitted to the voters on or before November 3, 1970. Inasmuch as the signers of the petitions, as is evident from the face of the petitions, did not intend to have the proposition submitted any later than November 3, 1970, those petitions are ineffective as petitions proposing a constitutional amendment at some election after the general election held on November 3, 1970.

CONCLUSION

It is the opinion of this office that when initiative petitions proposing a constitutional amendment are filed with the Secretary of State and found to contain insufficient signatures to place the proposition on the ballot, such petitions cannot be returned to the circulators; and such petitions, which provided for submission of the proposed amendment at the November 3, 1970 general election or at a special election to be called by the Governor, may not be counted toward placing a proposition on the ballot at a general election or a special election to be held after the general election on November 3, 1970.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly



JOHN C. DANFORTH
Attorney General